

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
NORTHEASTERN DIVISION**

NUCLEAR DEVELOPMENT LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.: 5:18-CV-01983-LCB
	)	
TENNESSEE VALLEY	)	
AUTHORITY,	)	
	)	
Defendant.	)	

**DEFENDANT’S REPLY IN SUPPORT OF MOTION TO SUPPLEMENT  
THE SUMMARY JUDGMENT RECORD**

Defendant Tennessee Valley Authority (“TVA”) respectfully submits this reply in support of its pending motion to supplement the summary judgment record (Doc. 128).

1. ND offers only two grounds in opposition to TVA’s motion, both of which are frivolous.

2. *First*, ND complains that the record is being supplemented “two weeks before the summary judgment hearing.” Doc. 129 at 1. But ND fails to mention that the relevant materials that TVA seeks to supplement the record with have only recently been released by the NRC.

3. *Second*, ND erroneously insists that the information in the supplemental materials is cumulative. Doc. 129 at 1. But, for example, the NRC’s pronouncement

pertaining to the extension of the Unit 2 construction permit is a clear and unequivocal statement that fatally undermines ND's repeated assertion that the status of the Unit 2 construction permit had been in doubt. Furthermore, the fact that these materials from the NRC bolster points previously made by TVA is hardly a reason to prevent supplementation of the record. And while TVA understands that ND wishes that the NRC did not support TVA's position on these points, that too is no reason to prevent supplementation of the record.<sup>1</sup>

4. Remarkably, after opposing supplementation of the record, ND then submits three pages of argument about points it would cite from the supplemental materials. Doc. 129 at 2-5. ND cannot have its cake and eat it too.

5. Finally, ND says that TVA submitted an incomplete exhibit with its motion to supplement. Doc. 128 at 1. Not so. The NRC's order extending the construction permits (Doc. 128-1) stands alone, and it includes the information that TVA believes is necessary to supplement the record. The Court should reject ND's suggestion that additional materials (*i.e.*, a cover letter and separate safety evaluation) are required to be part of TVA's supplemental submission.

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<sup>1</sup> The Court also may take judicial notice of the documents because both documents are federal agency orders. *See N.L.R.B. v. Goya Foods of Fla.*, 525 F.3d 1117, 1139 n.30 (11th Cir. 2008) (A "district court c[an] take judicial notice of [an] agency order." (citation and internal quotations omitted)); *Sw. Georgia Fin. Corp. v. Colonial Am. Cas. & Sur. Co.*, No. CIV.A. 7:08-CV-55HL, 2009 WL 1410272, at \*1 (M.D. Ga. May 19, 2009) ("[A] Court may take judicial notice of the rules, regulations and orders of administrative agencies issued pursuant to their delegated authority." (citation omitted)).

Respectfully submitted this 9th day of February, 2021.

s/ Matthew H. Lembke  
Attorney for Defendant

OF COUNSEL:

Matthew H. Lembke  
Riley McDaniel  
BRADLEY ARANT BOULT CUMMINGS LLP  
1819 Fifth Avenue North  
Birmingham, Alabama 35203-2119  
Telephone: (205) 521-8000  
Facsimile: (205) 521-8800  
mlembke@bradley.com  
rmcdaniel@bradley.com

David D. Ayliffe  
Jill McCook  
Office of the General Counsel  
TENNESSEE VALLEY AUTHORITY  
400 West Summit Hill Drive, WT6  
Knoxville, Tennessee 37902  
Telephone: (865) 632-3052  
ddayliffe@tva.gov  
jemccook@tva.gov

**CERTIFICATE OF SERVICE**

I hereby certify that on February 9, 2021, a true and correct copy of the foregoing was filed electronically with the Clerk of Court using the CM/ECF system, which will send electronic notification of such filing to all counsel of record:

Caine O'Rear, III  
HAND ARENDALL HARRISON SALE, LLC  
Post Office Box 123  
Mobile, Alabama 36601  
corear@handarendall.com

Edward Shane Black  
HAND ARENDALL LLC  
102 South Jefferson Street  
Athens, Alabama 35611  
sblack@handarendall.com

Larry David Blust  
HUGHES SOCOL PIERS RESNICK DYM, LTD.  
70 West Madison Street, Suite 4000  
Chicago, Illinois 60602  
lblust@hsplegal.com

s/ Matthew H. Lembke  
OF COUNSEL